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The Inferred Intent Rule Under Pennsylvania Law

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Insurance policies do not cover injury intentionally caused by the insured. Coverage of such claims would be antithetical to the basic principle of insurance. This principle is typically expressed in an exclusion for injury expected or intended from the standpoint of the insured. The general rule in Pennsylvania is that an insured will be found to have intentionally caused harm only where it is alleged that the harm was intentionally caused (for purposes of the duty to defend) or where it is proven that the insured subjectively intended to cause the harm, or similar harm (for purposes of the duty to indemnify), see *Eisenman v. Hornberger*, 264 A.2d 673, 673 (Pa. 1970); and *United Services Automobile v. Elitzky*, 517 A.2d 982, (Pa. Super.1986). There is an exception to this general rule known as the inferred intent rule or inferred intent doctrine.

The inferred intent rule was first considered under Pennsylvania law by the U.S. Court of Appeals for the Third Circuit in *Wiley v. State Farm Fire & Casualty*, 995 F.2d 457, 458 (3d Cir. 1993). In *Wiley*, the court was called on to predict whether the Pennsylvania Supreme Court would obligate an insurer under homeowners' insurance policy to cover an insured for claims that he sexually molested his minor niece. The complaint against the

insured alleged that the insured sexually molested his 13-year-old niece while she was visiting his home. The insured was an alcoholic and was intoxicated during the episodes of molestation.

The court surveyed the law nationally and observed that the majority of courts considering an insurer's obligation to provide coverage for damages caused by an insured adult's intentional sexual abuse of a child had concluded that the insured's intent to harm will be inferred as a matter of law despite the insured's assertion that he subjectively intended no harm. These courts supported adoption of such a rule by noting that the state's proscription of sexual conduct between an adult and a minor is a clear indication that such contact is inherently injurious to the victim, that criminalization of such conduct additionally serves to place the insured on notice of the societal understanding that the harm from such conduct is inseparable from its performance and that, as a matter of insurance contract interpretation based on the expectations of the parties to the contract, the average person purchasing homeowner's insurance would not expect coverage for liability arising out of his sexual abuse of a child. The court concluded that a rule holding that harm to children in sexual molestation cases is inherent in the very act of sexual assault committed on a child, regardless of the motivation for or nature of such assault, and that the resulting injuries are, as a



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matter of law, intentional represents an enlightened and perceptive view of the evolving law and predicted that the Pennsylvania Supreme Court would adopt the inferred intent rule in liability insurance cases involving an insured adult's intentional sexual abuse of a child to raise a conclusive presumption of the insured's intent to harm the victim, regardless of the insured's assertions of a subjective lack of intent to harm.

The court also held that the inferred intent rule applied in the case of an adult's sexual molestation of a child even where the perpetrator was incapable of forming an intent to harm due to intoxication. The court reasoned that where the act itself warrants application of the inferred intent rule, the actor's actual subjective intent was irrelevant.

The inferred intent rule was first addressed by the Superior Court in *Aetna Casualty & Surety v. Roe*,

650 A.2d 94 (Pa. Super. 1994). In *Roe*, the insured were school teachers who were sued by their students' parents and guardians. The complaints alleged that the teachers sexually, physically and mentally abused the children while they were at school. The Superior Court stated that it agreed with the analysis in *Wiley* and thus adopted the inferred intent rule for liability insurance cases involving the sexual abuse of a child by an insured adult, see *Erie Insurance Exchange v. Claypoole*, 673 A.2d 348 (Pa. Super. 1996).

To date, the inferred intent rule has not been extended to claims other than claims involving the sexual abuse of a minor child at the hands of an adult.

In *Aetna Life & Casualty v. Barthelemy*, 33 F.3d 189, 190 (3d Cir. 1994), the court refused to extend the rule to a claim arising out of a sexual encounter involving two college students. The complaint alleged that the insured had non-consensual sexual relations with the plaintiff after getting her drunk. The plaintiff alleged that the insured was guilty of battery, negligent or reckless conduct, and reckless infliction of emotional distress. The complaint also alleged that the insured did not expect or intend that his conduct would cause the injuries suffered by the plaintiff. The district court held that the inferred intent rule applied to preclude coverage, reasoning that the *Wiley* court's reasons for predicting adoption of the inferred intent rule in cases of child molestation were no less persuasive when the alleged victim was an adult.

The court of appeals reversed, observing that there was no allegation that a crime had been committed and that the plaintiff had conceded that the insured did not intend to cause the harm she suffered. The court also emphasized that sexual abuse of a child is a "uniquely harmful act." The court also stated that the plaintiff was a 19-year-old peer

of the insured, the insured claimed that the plaintiff consented (whereas in *Wiley* there was no contention that the child consented to the sexual contact), the insured in *Wiley* pleaded guilty to criminal charges whereas no criminal charges were brought against the insured and finally both participants in the sexual conduct were intoxicated, see *Barthelemy*, 33 F.3d at 193; see also *Teti v. Huron Insurance*, 914 F. Supp. 1132, 1140 (E.D. Pa. 1996) (where the victim is legally capable of consenting to intercourse, the inferred intent rule is inapplicable).

The Superior Court found that the rule applied to a claim arising out of plaintiff's death from a heroin overdose in *Minnesota Fire & Casualty v. Greenfield*, 805 A.2d 622 (Pa. Super. 2002). In *Greenfield*, the defendant was the insured under a homeowners' policy. The insured's friend came to the insured's house to buy heroin. The insured, who was intoxicated, sold heroin to the friend. While still at the insured's house, the friend voluntarily used the heroin, overdosed and died. The friend's parents sued the insured alleging that the insured knew or should have foreseen the harmful and dangerous consequences of selling their daughter heroin and should have taken action to revive the friend once he saw that she was nonresponsive. The trial court found that the complaint included no allegation that the insured intended to cause his friends death and that therefore the claim was not excluded by the policy's exclusion for expected or intended injury. The Superior Court reversed, concluding, inter alia, that the inferred intent rule applied to the claim because the friend's death was exactly the sort of harm expected from use of heroin.

On further appeal in an opinion announcing the judgment of the court written by Justice Sandra Schultz

Newman, the Supreme Court reversed. The court observed that Pennsylvania applies a general liability standard for determining the existence of specific intent that looks to the insured's actual subjective intent. The inferred intent rule is a departure from that general rule and is to be applied only in the most exceptional circumstances. The exceptional circumstances that lead the Third Circuit to apply the rule in *Wiley* were not present in *Greenfield*. The victim was not a child. The victim had consented to the use of heroin. Both participants were intoxicated. Although two justices wrote concurring opinions and two dissented, none took issue with Newman's conclusion that the inferred intent rule was not properly extended to the facts of the case.

The courts have demonstrated a reluctance to extend the inferred intent rule beyond the context of claims for sexual assault of a minor child at the hands of an adult. The fundamental factor in the rule's application appears to be whether the victim is capable of consenting to the act that causes the harm. It seems unlikely that the rule will be applied to adults at least at the duty to defend stage even if the other factors identified by the court (victim's lack of consent, victim's lack of intoxication) are present.

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